IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 16679 of 2004

Between:

Madarapu Veera Raju, S/o. Narayana Rao, aged 51 years,
R/o. Komaripalem, Biccavolu Mandal, East Godavari District.

..... PETITIONER

AND

1 The Deputy Registrar of Cooperative Societies, Rajahmundry,

East Godavari district.
2 Komaripalem Primary Agriculture Cooperative Credit Society Limited

No.1230, Komaripalem Biccavolu Mandal, East Godavari District

Rep. by its Chair Person/Person Incharge Committee

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate, Writ, order or direction declaring the action of the 1st respondent in directing the 2nd respondent to take disciplinary action against me and the consequential action of the 2nd respondent in placing me under suspension vide in R.C.No. 1/04 dated 11-08-2004 even without notice as illegal, arbitrary and violative of Article 14 and 21 the Constitution of India

Counsel for the Petitioner: MR.Y.V.SRINIVASAN

Counsel for the Respondent No.1: GP FOR COOPERATION

Counsel for the Respondent No.2: MRS K.RAJYALAKSHMI

The Court at the stage of admission made the following:

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ORDER:

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Challenging the action of the 1st respondent in directing the 2nd respondent to take disciplinary action against the petitioner and consequent action of 2nd respondent in placing the petitioner under suspension vide RC.1/2004, dated 11.08.2004, the present writ petition is filed.

While the petitioner transferred as Secretary to Vaddiparru Primary Agriculture Cooperative Credit Society (for short “PACCS”) worked up to 1996, having been transferred from Munikudala PACCS in the year 1983. Presently he joined as a Secretary with the 2nd respondent. The higher officials of the Cooperative Sector retrenching the services of the employees of the Cooperative Societies on various grounds, such as, surplus budget, employees were appointed contrary to the provisions of the Act 2/94, initiation of proceedings under Section 59 of the Act with a motto to expel the

employees. In pursuance of the directions issued by the 1st respondent, the 2nd respondent placed the petitioner under suspension. No prior notice was served to him calling for explanation, and the impugned proceedings do not indicate when the audit under section 50 or enquiry under section 51 or Inspection under section 52 of the Act conducted. Therefore, the proceedings are very vague for the alleged act committed in the year
1994-96. The present disciplinary action is invented with a view to retrench the petitioner. Hence the writ petition is filed.

The 2nd respondent filed counter stating that the petitioner worked as a Secretary in Vaddiparru PACCS from 21.02.1994 to 02.11.1996 and thereafter he absconded from duties since then. The Divisional Cooperative Officer, Amalapuram in his proceedings dated 29.03.2004 pointed out certain irregularities and called upon the petitioner to explain, but the petitioner gave irrelevant and irresponsible reply. Therefore, the District Cooperative Officer, Amalapuram requested the 1st respondent to instruct the Managing Committee to take disciplinary action against the petitioner in exercise of powers under section 59 of the A.P.Cooperative Societies Act, 1964. Thereafter, the person in-charge of the Committee passed a resolution dated 11.08.2004 keeping the petitioner under suspension pending enquiry. It is stated that placing an employee under suspension is not a punishment and therefore, there are no grounds to interfere with the impugned proceedings.

The learned counsel for the petitioner contended that the petitioner did not commit any fraud or irregularities in so far as the present Cooperative Society is concerned and therefore, the Committee of the present cooperative society cannot put the petitioner under suspension. Therefore, he prays to declare the impugned proceedings as illegal.

On the other hand, the learned counsel appearing for the 1st respondent contended that the 1st respondent is competent authority

under section 59 of the Act to give necessary directions to the Managing Committee of the Cooperative Society to place an employee under suspension, and rightly the 2nd respondent passed the impugned proceedings and the impugned proceedings are not challenged on the question of jurisdiction of the competent authority. The learned counsel appearing for the 2nd respondent contended that it is only suspension pending enquiry.

No doubt there is a delay in placing the employee under suspension but the jurisdiction of the 1st respondent in directing the 2nd respondent to place an employee under suspension by virtue of powers conferred under section 59 of the
A.P. Cooperative Societies Act, 1964 is not under challenge. For the irregularities said to have been committed by the petitioner while he was working as Secretary of Vaddiparru PACCS during his tenure from 02.12.1994 to 02.11.1996 with regard to the misappropriation of funds, the petitioner was placed under suspension. Admittedly, the petitioner did not misappropriate the funds of Komaripalem PACCS. The Chairman, Komaripalem PACCS, has issued the impugned proceedings. It is not disputed before this Court that the 1st respondent is the competent authority who can direct the Committee to place an employee under suspension under section 59 of the Act within his territorial jurisdiction. Further more the jurisdiction of the 1st respondent in directing a particular committee to place an employee under suspension is not challenged. Therefore, he can give a direction to the Committee of the Cooperative Society where the petitioner is presently working. He cannot give a direction to the Committee where the petitioner was previously worked for the simple reason that the petitioner was not working at the place where he alleged to have been committed fraud and irregularities.

The learned counsel for the petitioner placed reliance on a decision reported in ***Nookala Gavaraiah vs. Special Category Deputy Registrar & others,*** wherein it was held:

> "Here is a case where the action initiated under Section 51 of the Act is not

against the 4th respondent-Bank which is also a 'Cooperative Society' within the meaning of that term. Added to this, the petitioners never served in the establishment of the Rana Primary Agricultural Co-operative Society as paid employees or officers. Therefore, the submission of the learned Counsel for the petitioner that necessary conditions for exercising the power under Section 59 (1) of the Act did not exist before the impugned direction was issued by the 1st respondent is well-founded."

The above decision has no application because in the afore said case the petitioner was never served in the establishment of a particular Cooperative society. As the petitioner herein was not presently working as a Secretary to Vaddiparru PACCS and he worked during the period from 21.02.1994 to 02.11.1996, the 1st respondent cannot issue a direction to the Managing Committee of Vaddiparru PACCS to place the petitioner under suspension. As the petitioner is not working at Vaddiparru PACCS, but presently working with the 2nd respondent, the 2nd respondent is the competent person to place the employee under suspension for the irregularities committed even in other societies.

Viewed from any angle, the impugned proceedings do not suffer from any legal infirmities so as to call for any interference. Hence the writ petition is devoid of merit. However, since the petitioner was placed under suspension with effect from 11.08.2004, a direction can be given to the

2nd respondent to complete the enquiry within four months from the date of receipt of a copy of this order. It is also made it clear that the petitioner is entitled for subsistence allowance during his suspension period as per the rules or bylaws.

The Writ Petition is, accordingly, disposed of. No order as to costs.

Dated: 10.12.2004

Dsr

ASSISTANT REGISTRAR

To:

1. The Deputy Registrar of Cooperative Societies,

Rajamundry, East Godavari District

2. The Chair person/Person incharge Committee,

Komaripalem Primary Agriculture Cooperative

Credit Society Ltd. No.1230, Komaripalem,

Riccavolu Mandal, East Godavari District

3. Two CCs to the Government Pleader for Cooperation,

High Court Buildings, Hyderabad (OUT)

4. Two CD copies.